

367.954 Forty percent of funds paid for cemetery merchandise to be held in trust for purchaser until delivery -- Bond in lieu of trust fund.

- (1) Forty percent (40%), not including interest or finance charges, of all payments of money made to any person, partnership, association, or corporation upon any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or delivery of cemetery merchandise, which within six (6) months of the date of the contract is not delivered by attachment to the realty and permanent installation or which is not stored in a bonded warehouse with the receipt of ownership issued by the manufacturer in the name of the purchaser and transmitted to the purchaser are held to be trust funds. The person, partnership, association, or corporation receiving the payments shall deposit forty percent (40%) of all payments received on a preneed cemetery merchandise contract in a trust fund account within six (6) months of the date of contract, and forty percent (40%) of all payments received thereafter on said contract shall be deposited in the trust fund account within thirty (30) days after each calendar quarter of operation. The trustee shall be the financial institution holding said funds. All of the interest, dividends, increases, or accretions of whatever nature earned by the funds deposited in a trust account shall remain with the principal of such account and become a part thereof, subject to all of the regulations concerning the principal of said fund herein contained.
- (2) All trust funds mentioned in this section shall be deposited in the name of the person making said deposits, with the financial institution as trustee, and shall be held together with the interest, dividends, or accretions thereon, in trust, subject to the provisions of KRS 367.932 to 367.974 and 367.991. The person at the time of making deposit or investment shall furnish to the financial institution the name of each payor, and the amount of payment on each account for which the deposit or investment is being made.
- (3) Forty percent (40%) of all payments, not including interest or finance charges, made under the agreement, contract, or plan are and shall remain trust funds with the financial institution, until the financial institution receives a sworn affidavit from the depositor stating one of the following:
 - (a) That the delivery of all merchandise by attachment to the realty, or permanent installation of the merchandise has been completed and that there has been full performance of all services called for by the agreement, contract or plan; or
 - (b) That there has been delivery of all of the merchandise called for by the agreement by storing the same in a bonded warehouse with the receipt of ownership issued by the manufacturer in the name of the purchaser and transmitted to the purchaser.

Upon receiving said affidavit, the financial institution shall remit the funds on deposit for the performed contract, plus interest, to the depositor. Release of funds may also be made pursuant to a request for a refund or cancellation under KRS 367.932 to 367.974 and 367.991.

- (4) In the event that a purchaser is in default of a preneed cemetery merchandise contract, the financial institution shall release to the depositor the funds, plus

interest, deposited on behalf of the defaulted contract upon receiving from the depositor a sworn affidavit stating that the purchaser is in default of the preneed cemetery merchandise agreement, the date of the default, an explanation of the default, and that the depositor has mailed a copy of the affidavit to the purchaser's last known address at least thirty (30) days prior to said request for release.

- (5) Deposits to such funds and the amounts deposited may be commingled, but the accounting records shall establish a separate account for each prepaid contract and shall show amounts deposited and the income and loss occurring thereon with respect to each contract.
- (6) The trustee may rely upon all certifications and affidavits made pursuant to or required by the provisions of KRS 367.932 to 367.974 and 367.991, and shall not be liable to any person for such reliance.
- (7) In lieu of the trust fund deposits required herein, the person may post with the Attorney General, Division of Consumer Protection, a good and sufficient bond by a surety company licensed to do business in Kentucky and in an amount sufficient to cover all payments made by or on account of purchasers who have not received the purchased property and services. This bond shall be held for the benefit of a purchaser, or his or her heir or assign or duly authorized representative, who suffers a loss of money paid pursuant to a preneed cemetery merchandise contract entered into after July 13, 1984, due to the insolvency of the registrant, or failure to provide the cemetery merchandise called for by contract that has been paid in full and not provided after a ninety (90) day request in writing to do so. If a bond is posted, the Attorney General's office shall receive sixty (60) days' written notice in the event of cancellation. On or before the cancellation date, the person shall comply with the trust fund requirements herein or post another good and sufficient bond.
- (8) Any person selling a preneed cemetery merchandise contract shall pay to the Attorney General five dollars (\$5), for each said contract entered into and all of which fees shall be remitted by the person collecting them to the Attorney General at least once each month, and such funds shall be used by the Attorney General in administering this chapter.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 116, sec. 14, effective July 13, 1984.